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**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**AT NASHVILLE, TENNESSEE**

2004 MAY 12 PM 4 13  
May 12, 2004 T.R.A. DOCKET ROOM

IN RE:

UNITED CITIES GAS COMPANY, a  
Division of ATMOS ENERGY  
CORPORATION INCENTIVE PLAN  
ACCOUNT (IPA) AUDIT

DOCKET NO.  
01-00704

UNITED CITIES GAS COMPANY, a  
Division of ATMOS ENERGY  
CORPORATION, PETITION TO AMEND  
THE PERFORMANCE BASED  
RATEMAKING MECHANISM RIDER

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**RESPONSES TO CONSUMER ADVOCATE'S MOTION TO COMPEL DISCOVERY  
SERVED ON THE TENNESSEE REGULATORY AUTHORITY STAFF**

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The Staff of the Energy and Water Division of the Tennessee Regulatory Authority ("Staff"), pursuant to the Hearing Officer's Order of April 28, 2004 hereby submit the following responses to the motion to compel received by Staff on May 12, 2004 from the Consumer Advocate and Protection Division ("Consumer Advocate"):

**RESPONSE REGARDING INTERROGATORY NO. 6**

The Consumer Advocate's Motion to Compel seeks to compel a supplemental response from Staff only as to Interrogatory No. 6 which asks the Staff to

Explain in detail the extent to which the FERC Order: Modification of Negotiated Rate Policy, Natural Gas Pipeline Negotiated Rate Policies and Practices, 104 FERC ¶ 61,134 (2003) may be relevant to the question of whether the proposed settlement is in the public interest.

Staff has fully answered this interrogatory. The Staff has stated that

Although Staff reserves the right to review this document to the extent it is relied upon by any party to this docket in support of any contention in this docket, Staff is unfamiliar with this document and has not relied on it in any way in reaching the proposed settlement in this docket. To the extent that this question seeks to determine whether this document is relevant to the issue of whether the proposed settlement results in an amendment to the PBR tariff that is just and reasonable, Staff would preliminarily state that the document is apparently irrelevant to this issue.

Staff has stated its current level of familiarity with the document and gone further to speculate that the document is apparently irrelevant to this issue while reserving the right to review the document to the extent that it is ever relied upon by any party to this docket. The extent of the relevancy of something that is irrelevant (i.e., not relevant at all) is, of course, no extent at all. Staff should not be required to further speculate whether the Consumer Advocate intends to rely on this document and for what purpose. If such a burdensome precedent were set Staff might soon be confronted with additional “discovery” in the form of an extensive reading list—effectively assigned to it by the Consumer Advocate—all of which might likewise be irrelevant to this docket.

#### **RESPONSE TO REMAINING ARGUMENTS RAISED IN THE MOTION TO COMPEL**

The word “ground” is defined by Black’s Law Dictionary as “the reason or point that something relies on for validity.”<sup>1</sup> Thus reasons offered in support of a proposition are either valid and acceptable or invalid and unacceptable depending upon the standard applied.

The word “standard” is defined by Black’s Law Dictionary as “a criterion for measuring acceptability, quality, or accuracy.”<sup>2</sup>

The Consumer Advocate uses the word “grounds” to describe two entirely different concepts: one, facts offered in support of a request; and two, the legal standard governing

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<sup>1</sup> *Black’s Law Dictionary* 710 (Bryan A. Garner ed., 7<sup>th</sup> ed., West 1999)

<sup>2</sup> *Black’s Law Dictionary* 1412-1413 (Bryan A. Garner ed., 7<sup>th</sup> ed., West 1999).

whether such a request should be granted. Clearly, the term “grounds” can not incorporate both concepts.

The Consumer Advocate demonstrates its confusion regarding the proper use of the term “grounds” with statements contained in its Motion to Compel. On page four of its Motion to Compel, the Consumer Advocate implies that only one fact has been offered by Staff and the Company in support of the request that the Settlement Agreement be approved by stating:

*As the only grounds supporting their motion* [emphasis added] for approval of the settlement agreement AEC and the TRA Staff cite as grounds, on unnumbered page 3 . . . .

Later, on page five of the Consumer Advocate’s Motion to Compel, the Consumer Advocate implies that only one legal standard for granting or denying approval of a Settlement Agreement has been identified by Staff or the Company to be utilized in the Authority’s analysis of the Settlement Agreement by stating:

The only clear statement regarding the proper *ground for granting* [emphasis added] the motion is set out in the response by AEC and the TRA Staff filed and served on May 5, 2004, where each disavow the very ground on which their motion for approval is predicated.

The Consumer Advocate’s implication that the word “grounds” is meant to describe a legal standard is further demonstrated on page six of its Motion to Compel with the statement that:

Until AEC and the TRA Staff settle on a *standard* which forms the ground(s) for granting their motion . . . .

Contrary to the Consumer Advocates assertion that “AEC and TRA Staff also appear to suggest that there is no standard for approval of the settlement agreement attached to their motion,”<sup>3</sup> Staff, for its part, has identified the very standard applied to three settlement agreements to which the Consumer Advocate was a party and which were approved, either in whole or in part, by the Authority. The Consumer Advocate’s suggestion that the Authority

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<sup>3</sup> *Consumer Advocate’s Motion to Compel Discovery*, p. 5 (May 12, 2004)

would approve a settlement agreement without first applying the proper legal standard to such an agreement has no basis and should be rejected. More importantly, Staff's identification of the proper legal standard governing the approval of settlement agreements will not lead to the discovery of admissible evidence and it is for this reason that the Motion to Compel should be denied. In any case, the Consumer Advocate has full knowledge of the "grounds" of each of the settlement agreements identified by Staff in its Supplemental Response. The Consumer Advocate's statement that it has been presented with a "tremendous problem"<sup>4</sup> in that it "does not know what ground the parties rely on in seeking approval of their motion" is hard to understand. To the extent that the Consumer Advocate is using the word "ground" to mean the applicable legal standard, that standard is known to them by virtue of the fact that they were a party to each of the settlement agreements offered as examples and attached to Staff's Supplemental Responses. Therefore the Consumer Advocate should not need additional discovery to determine the applicable legal standard because the Consumer Advocate presumably relied upon the same standard in seeking approval of the settlement agreements to which it was a party.

To the extent that the Consumer Advocate is using the word "ground" to mean the facts offered in support of the Settlement Agreement, the Staff has already pointed to all of the facts that make up the record in three separate dockets.

The Consumer Advocate's confusion regarding the proper use of the term "grounds" is most clearly demonstrated on page seven of its Motion to Compel where it offers as "grounds supporting motion" several factual allegations—but fails to practice what it preaches. Nowhere on page seven of the Motion to Compel in the section identified as "grounds for motion" does the Consumer Advocate identify the legal standard that should govern its motion. If the

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<sup>4</sup> *Consumer Advocate's Motion to Compel Discovery*, p 5 (May 12, 2004)

Authority were to apply the standard the Consumer Advocate seeks to apply the Staff, then its Motion to Compel would have to be denied as "defective." This would, of course, be ridiculous and unnecessary. The Consumer Advocate's motion should instead be denied because it seeks to compel discovery that is not reasonably calculated to lead to the discovery of admissible evidence (which, by the way, is the applicable legal standard for such a motion).

To the extent that there is a separate standard governing motions to approve settlement agreements, there can only be one such standard. If such a separate standard exists, identifying that standard at this point in the proceeding will do nothing to lead to the discovery of additional admissible evidence in this proceeding.

Based on the foregoing, Staff respectfully requests that the Hearing Officer deny the *Consumer Advocate's Motion to Compel Discovery*.

Respectfully submitted,

ENERGY AND WATER DIVISION  
OF THE TENNESSEE REGULATORY AUTHORITY




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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via hand delivery or U.S. Mail, postage prepaid, upon the persons listed below this 12<sup>th</sup> day of May, 2004.

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